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and ON CHAIN INNOVATIONS, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HIDDEN EMPIRE HOLDINGS, LLC;
a Delaware limited liability company;
HYPER ENGINE, LLC; a California
limited liability company; DEON
TAYLOR, an individual,

Plaintiffs,

v.

DARRICK ANGELONE, an
individual; AONE CREATIVE, LLC
formerly known as AONE
ENTERTAINMENT LLC, a Florida
limited liability company; ON CHAIN
INNOVATIONS, LLC, a Florida
limited liability company,

Defendants.

Case No. 2:22-cv-06515-MWF-AGR
Action Filed: September 12, 2022

Assigned to Honorable
Judge Michael W. Fitzgerald

**DEFENDANTS' SUR-REPLY TO
PLAINTIFFS' SUPPLEMENT TO
REPLY BRIEF**

DATE: March 18, 2024
TIME: 10:00am
DEPT: 5A

TO THIS HONORABLE COURT AND TO EACH PARTY AND THEIR
ATTORNEYS OF RECORD:

COMES NOW, Defendants DARRICK ANGELONE, AONE CREATIVE,
LLC and ON CHAIN INNOVATIONS, LLC, by and through their attorneys of
record, and pursuant to 37 CFR § 42.23, submit their Sur-Reply to Plaintiffs'
Supplement to Reply Brief.

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1 Once again, Plaintiffs attempt to argue that pursuant to a newly decided case,
 2 terminating sanctions are appropriate in a case in which there has been intentional
 3 spoliation of evidence. And once again, Plaintiffs have ignored the crux of
 4 Defendants' Opposition to Plaintiffs' Motion: the inquiry here is a factual one,
 5 requiring at the very least, an evidentiary hearing on the issue of whether Defendants
 6 have, in fact, engaged in spoliation of evidence. Defendants vehemently deny that
 7 there has been spoliation. There have been no depositions taken in the case, and the
 8 only guidance provided to the Court at this time are the reports by the experts retained
 9 by the parties.

10 Plaintiffs' argument to the effect that Defendants engaged in spoliation of
 11 evidence is the allegation that Mr. Angelone deleted the Google Workspace account
 12 of HEFG. As was stated by Mr. Angelone in his Declaration in Opposition to the
 13 instant Motion (Dkt. 121 p.2) he did not delete the account. In addition, as is discussed
 14 in the Rebuttal Report and Expert Opinion of Rick Watts attached to the Supplemental
 15 Declaration of Sandra Calin (Dkt. 122), Mr. Watts at page 12 of his report states that
 16 there is no factual basis for the opinion of Plaintiff's expert Erin Burke that Mr.
 17 Angelone deleted the Google Workspace account. In fact, Mr. Watts specifically
 18 states that he reviewed the Google logs that indicate who had actually logged into the
 19 subject account. At pages 14-15, ¶¶ 44 – 46, Mr. Watts cites information received
 20 directly from Google to the effect that there was no login by Mr. Angelone to the
 21 Google Workspace account after October 7, 2022.

22 The critical inquiry here is whether there was, in fact, spoliation of evidence,
 23 and that cannot be determined without a full evidentiary hearing, or at least testimony
 24 from depositions where parties can be cross-examined.

25 Defendants respectfully urge the Court to deny Plaintiffs' Motion, which
 26 essentially seeks to circumvent the due process of allowing Defendants to try this case
 27 on its merits, rather than the harsh sanction of terminating the case at this early
 28 juncture. Nothing in the case cited by Plaintiffs in their Supplement to Reply Brief

1 changes this analysis. Simply because a new case has held that terminating sanctions
2 are appropriate in a case where there has been spoliation of evidence does not mean
3 that in the case at bar, based on the facts presented, there has been spoliation of
4 evidence. Therefore, terminating sanctions are not proper.
5

6 DATED: March 6, 2024

KRAMER, DEBOER & KEANE

7
8
9 By: 

10 JEFFREY S. KRAMER

SANDRA CALIN

11 Attorneys for Defendants
12 DARRICK ANGELONE, AONE
13 CREATIVE, LLC, and ON CHAIN
14 INNOVATIONS, LLC
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CERTIFICATE OF SERVICE

I am employed in Los Angeles County, California. I am over the age of 18 and not a party to this action; my business address is 21860 Burbank Blvd., Suite 370, Woodland Hills, CA 91367. My email address is ynelson@kdeklaw.com.

I certify that on March 6, 2024, I served: **DEFENDANTS' SUR-REPLY TO PLAINTIFFS' SUPPLEMENT TO REPLY BRIEF** on the following parties or counsel of record as follows:

LAWRENCE HINKLE (SBN 180551) STEPHANIE JONES NOJIMA (SBN 178453) JOSHUA ROY ENGEL SANDERS ROBERTS LLP 1055 West 7th Street, Suite 3200 Los Angeles, CA 90017 Telephone: (213) 426-5000 - Facsimile: (213) 234-4581 E-Mail: lhinkle@sandersroberts.com ; sjonesnojima@sandersroberts.com ; jengel@sandersroberts.com ;	<i>Counsel for Plaintiffs</i>
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By ECF/CM: I electronically filed an accurate copy using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed at Santa Clarita, California on March 6, 2024.

/s/ Yolanda Nelson
Yolanda Nelson